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FAMILY
HISTORY
ROSE
1886-1908

C17

12/06

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C.1886-1908

James E. Rose
Auburn
Auburn, Indiana

James E. Rose

His Cases

C.1886 – 1908

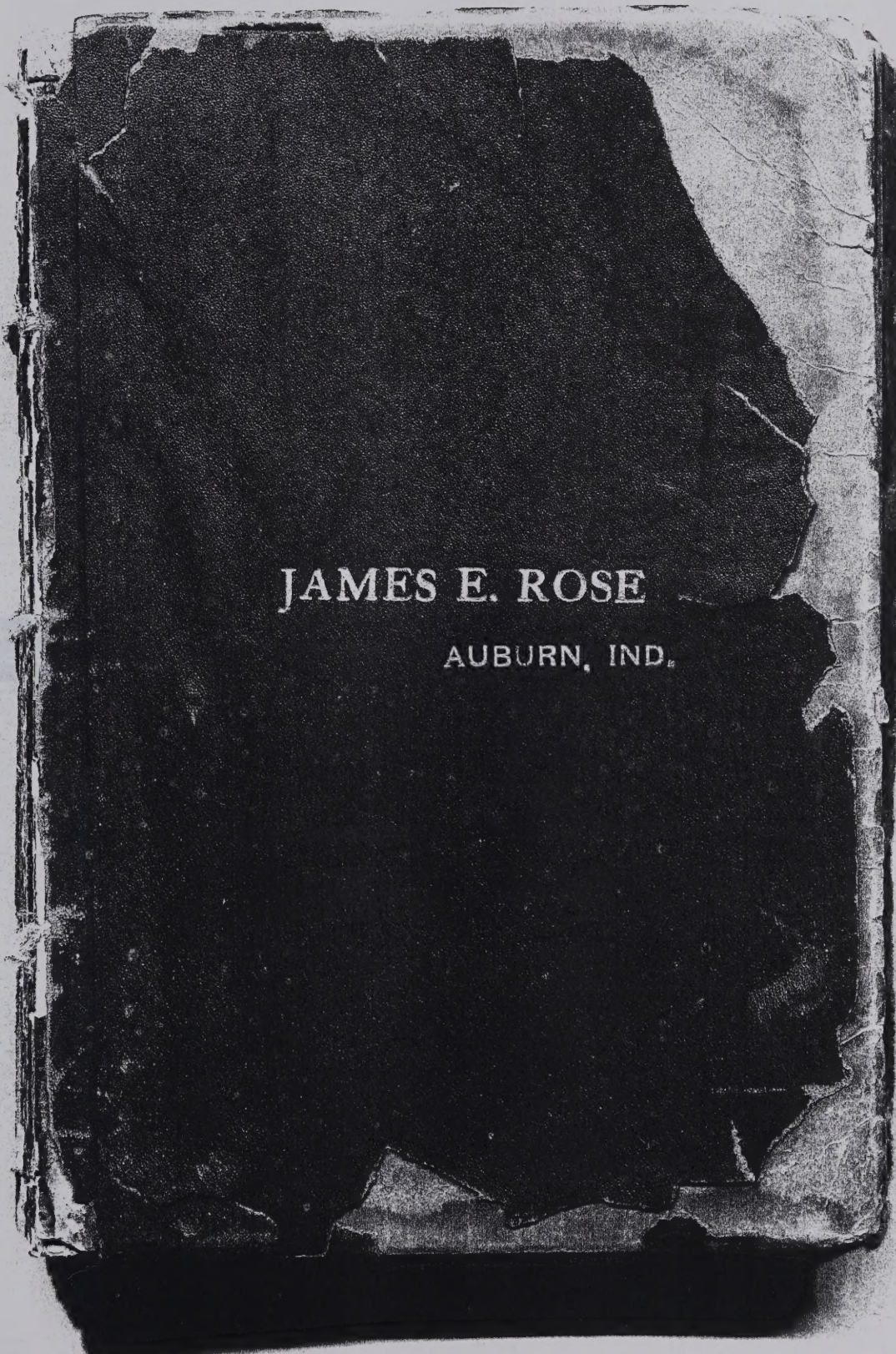
James E. Rose
Attorney
Auburn, Indiana

James E. Rose

James E. Rose practiced law in Auburn, Indiana as J. E. & J. H. Rose, Lawyers, on East Ninth Street. He was the local attorney for the B & O Railroad.

These two small ledgers, a record of court cases and briefs, were found in the Fort Wayne office of Robert A. Arnold and saved by Patricia (Arnold) Schooley of Hagerstown, Maryland.

Mrs. Schooley gave the two books to her sister-in-law, Jane (Schooley) Foley. Mrs. Foley gave them to the W. H. Willennar Genealogy Center where a copy is available for research.

The image shows the front cover of an antique book. The cover is dark, possibly black or dark brown, with a rough, textured surface. It is heavily worn, with large areas of the outer material missing, especially along the edges and corners, revealing a lighter, fibrous material underneath. The spine on the left is also damaged, showing the internal binding structure. The text "JAMES E. ROSE" is printed in a serif font in the center of the cover.

JAMES E. ROSE

AUBURN, IND.

APR 2 1915



Baber vs Baber	12
Bank of Vernon vs. Farmers Bank	13
B & O vs. Axtell	16
Baker vs B & O	17
B & O vs. Interurban	21
Brady vs. Shinnick	24
B & O vs. Leighty	29

Gramer vs. Grimmer 7
Barnahan vs. Barnahan 11
Barnahan vs. Bowers 15
Casebeer et al vs. Moore 38

5

Gisinger m. Grati

25

Hollister m. B & O

3

Jachman as Myers

33

Kennedy vs Carner 14

Kimbleman Drains 18

Kennedy vs Geigley 39

Mills vs LeRoy
McKinley vs R R

10

22

Norregon vs Murch

8

M
N
O
P
Q
R
S
T
U
V

Pontius n B. D. & al	2
Popplee n Gall	30
Pontius n Shilling	36

Remmer vs Chapman 23

Raiden n Sheets 26

Reed vs Draggoo 27

12.
Steele vs Axtel 31
Savings & Co vs Zinner 36
Glat vs Sherwood 41

Jennerson vs. Jennerson 1
Thomas vs. Thomas et al 28
Crust Co vs. Walker 32

Diary, Wyatt in B & C
Whitcomb June 1 in B & C.

6
42

1

No.

7272

DeKalb Cir. Court,

Iver Janneson vs. Sabina Janneson

Rose Rose & Sharpless Attorney for Pltf.

H W Morris Attorney for Deft.

Nature of the Action.

Complaint to set aside deed

DATES

HISTORY OF THE CASE

Aug 7/04. Complaint filed

Summons issued returnable Aug 29/04

NOTES OF AUTHORITIES.

Contract made by one who is drunk
may be avoided: 3 Blkf 31; 10 Ind. 109;
37 Ind 207; 4 App. 319.

No. 7388

2
DeKalb Co

Court, May Term 1905

Chas E. Pontius

vs. B. O. & Chas. Yill

Marshall et al

Attorney for Pltff.

J. E. & J. N. Rore

Attorney for Deft.

Nature of the Action.

Action for Damages \$30,900.00 joining
R. R. Co and Engineer as defendants.

DATES

HISTORY OF THE CASE

April 4/05 Compl't filed; Returnable May 15/05

NOTES OF AUTHORITIES.

If controversy is inseparable cause cannot be removed. *Ex parte R. R. Co v. Dixon* 179 U.S. 131

Master cannot be joined if controversy is separable nor if servant performs act in absence of master and without master's order. *Id.* page 474.

Form of Petition *Id.* See also 132 U.S. page 474. The pleadings at time of filing petition determine whether cause is removable. 132 U.S. p. 476

If servant's acts complained of were in violation of principal's order cause can be removed. 124 Fed. Rep. 983; 72 Fed. Rep. 637; 131 Fed. Rep. 985; 134 Fed. Rep. 313

Circuit Court, DeKalb Co
 Sherron Hollister vs. B. D. R. R. Co.
 F. L. Welsheimer
 J. B. & J. W. Rose

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

For Private Crossing of R. R. Track

DATES

HISTORY OF THE CASE

June 1847 Road established without width Rec B 227
 Oct 11/01 Complaint filed
 Oct 25/01 Demurrer to Compl. filed & overruled
 Nov 18/02 Ans. in 4 Par. filed
 Nov 13/02 Demurrer to 2, 3 & 4 Par. of Ans. filed

NOTES OF AUTHORITIES.

June 30/71 Land conveyed to Eel River V. 740
 Sept 20/73 " " " B. D. 17 20

Plaintiff sought to make crossing under
 the provisions of section 5320. Burns' statute
 The order establishing the road gives it no width
 and hence it is a road by user. 5 Blkf. 462; 9-103; 24-235
 102-578; 134-642.

The width of a road by user is determined by the place
 where travelled at end of 20 years 5-546; 10-227; 15-226
 It is unconstitutional to take land of one
 for the private way of another. 48-455; 46-331;
 123-372; 24 N.E. 135.

A way by necessity can not be claimed where both tracks
 have not been owned by the same person 46-331, 341

Continued use of a strip to walk or drive over
 does not make it a highway 68 N.E. 43; 39 N.E. 1017

2nd Ohio S. 107. It damages for R.R. xing 110 Ind 5

Surprise Co entitled to damages for highway xing 74 Ind 375

R.R. entitled to damages for removing bridge for railroad train
 R.R. not entitled to compensation for removing bridge for railroad train
 Chicago & N.W. Illinois, (Ind) 61/106

4

No. _____

Commissioners Court, DeKalb County
 People vs. Col. Fox
 J E & J H Rose

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

App. for Liquor License
 Remonstrance

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Any voter of the Township may remonstrate
 Sec. 7278 Burns 1891

Petitioner must reside in Township sec 7283
 A Licensee removing from the Township forfeits his
 license 71 N.E. 975
 Violating liquor law is immorality 111-861
 Remonstrator may sign by initials. 145-531.

5

No. _____

NOTES OF AUTHORITIES.

Circuit Court, Noble Co.

Sabina Immerson vs. E. Immerson

Monroe B. Leuk Attorney for Pltff.

Sharpless & Rose & Rose Attorney for Deft.

Nature of the Action.

Divorce

DATES

HISTORY OF THE CASE

Complaint filed
Venue to Noble County
Answer in 2 Pcs.

May 31/01 Petition for allowance
" " " Pltff. ordered to pay \$7⁰⁰ per week

Circuit Court, DeKalb Co
 Diantha Wyatt vs. B & O. R. R Co
 Rhodes & Penfield Attorney for Pltff.
 Rose & Rose & Stark Attorney for Deft.

Nature of the Action

Suit for damages for being let off
 train, not at destination. Demand \$2000⁰⁰

DATES

HISTORY OF THE CASE

31
 Moh 28/05 Complaint filed
 Demurr to complt. filed & overruled
 May 3/05 Examination of Pltff. filed
 June 1/05 Examination by deft. published
 Answer in G.D. filed
 June 12/05 Deposition of Mr & Mrs Hawks taken
 June 20/05 Deposition pub. motion to suppress sustained
 " 21/05 Submission set aside & Continued.

NOTES OF AUTHORITIES.

Plaintiff complains that defendant sold her a
 ticket for Homer, and put her off at Newton -
 The facts set out determine character of the
 pleading, and not epithets. 158 Ind. 624
 Passenger must consult company's regulations
 18 App 2639; 104 Ind 13; 133 Ind 480 486 bottom.
 Passenger should not follow, or rely on statement
 of Ticket Agent. 133 Ind 480 486 bottom.
 A ticket is not a contract, but is a receipt. 12 Am
 & Eng R R page 141.
 The rules of the Company govern the conductor
 18 Am. & Eng R R 252 note at bottom of p. 253
 Plaintiff was lawfully put off the train 3rd Am.
 Eng R R Cases 340
 Passenger cannot demand to be carried to
 station called for on ticket if train is not scheduled
 to stop there 9 Am. & Eng R R. 307
 A. Passenger may sue for being misled by a ticket
 agent, but not in an action for being ejected 118-227
 R. R. Co not required to stop at point where train
 is not scheduled to stop 80 Pacific Rep. 956
 Statements of party out of court not admissible in
 his favor. Indirect & Coll Evidence p. 322 et seq.
 7th App. 12 Ind 451 457; 13 App 31 32; 108 Ind 283
 Exclamation of pain 33 App 283.

LEGAL DEPARTMENT

STOPS AT NON-SCHEDULED POINTS

Supreme Court of Kansas, in Usher vs. Chicago,
 Island and Pacific Railway Company (80 Pacific
 956), holds that the issuance of a ticket to a station
 not imply that the ticket is to be used on the first
 leaving the point of sale. The ticket merely entitles
 purchaser to use the ticket on a train which, accord-
 the company's time card, stops at the place to
 the ticket is sold. The holder cannot require a
 stop at a station at non-scheduled points.

Court,

Laura Bell Cramer vs. David Cramer

J E & J H Rose

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

To set aside deed made by infant

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

An infant when of age may disaffirm deed.
 Burns Stat 91. Sec 3866. Also see 386.
 A minor may disaffirm deed 74-115; 24-385; 41-586; 54-24
 Deed must be disaffirmed before suit to recover 41-586;
 52-68; 119-187.
 What constitutes a disaffirmance 52-68; 64-100; 86-87
 Minor cannot disaffirm deed made to execute trust
 20 Ohio State 97; 16 Am & Eng leg d r 274
 Infant cannot repudiate mortgage for purchase money
 and hold deed Am. by 9 Law 1366

Circuit Court, DeKalb Co
 Sarah Norregon vs. Nancy Murch

J W Bette
 L R J N Rore

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

Feb 27/04 Complaint filed
 " " " Summons served
 Mch 21/04 Demurrer filed
 " " " Answer filed 2 paragraphs
 May 27/04 Amended Complaint filed
 June 16/05 1st Par of Supp. Compl't filed
 " " " 2^d Par of Amended Compl't filed
 June 24/05 Ans of Gladys Platt filed
 " " " Ans of Mary filed

21

NOTES OF AUTHORITIES.

Widows election to take land under the law must be filed within one year. Burns 191. See 2466

If the widow conveys devised lands it is an acceptance. ~~87~~ - 240, ²⁵⁷ 254.

Election by widow procured by fraud may be revoked 135-687-421; Fraud must be alleged in complaint 141-471 ⁴⁷¹ 149-363 ³⁴². If the will devises, devisees, property and devisees elects to accept will he cannot claim property by former ownership. 4 App 1165

No one but the widow can elect 120-172; 137-169; widow must elect as statute provides 120-172 ^{bottom} 145-28; An election may be revoked within one year 135-28; Fraud must be alleged ^{proved} 141-471.

Widow must elect as statute provides 158-438 12 App 70; If any beneficial interest is given the widow by the will she must elect to take under the law, or she takes under will 74 N.E. 526 Court should put itself in place of testator in order to interpret a will 1191-254; 20 N.E. 779, 152-163

Widow must elect as law provides 36 N.E. 714 137-169 - widower must elect 27 App 150 - If the plaintiff is to have $\frac{2}{3}$ in fee, it must be taken from the $\frac{2}{3}$ & $\frac{1}{3}$ 98 - 460

9

No. _____

Circuit Court, DeKalb Co

Baker et al vs. Healey

J. W. Baxter

Attorney for Pltf.

J. E. of H. Rose

Attorney for Deft.

Nature of the Action.

Partition

DATES

HISTORY OF THE CASE

Apr 10/95 - Complaint filed

" 12 " Summons served

May 13/05 - Aff of non. res filed

June 17/05 - Ans. of Charles Nelson filed

" 19/05 - Cross compt of Samuel B Heals filed

" " " Ans of Samuel filed

" " " Ans of Eli filed

" " " Ans of Mrs Wagner filed

June 19 - Ans to Samuel B Heals filed

June 26/05 - Trial of cause

NOTES OF AUTHORITIES.

Section 1203 Burns, provides who may have -

If a partial partition can be made it should be done Burns - 1203; 45-313;

10

No. 6675

Circuit Court, DeKalb
 Mills vs. Le Roy
 Sharpless Attorney for Pltf.
 McKenney & Rose & Roy Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Replevin of household goods, mortgage
 When household goods are mortgaged
 Mortgagee, entitled to possession when Burns
 Sec 7498 - 153-219;

This statute is constitutional 153-219

Receipt for payments must be given Sec.
 7498; Receipt must contain statement 153-219

23

11

No. _____

Circuit Court, DeKalb

Lucy M. Carnahan vs. John Carnahan

J. C. J. H. Rose

Attorney for Pltff.

P. V. Hoffman

Attorney for Deft.

Nature of the Action.

Divorce

DATES

HISTORY OF THE CASE

1905

July 7

Complaint filed
Notice of Alimony allowance

NOTES OF AUTHORITIES.

Application for "quit money" shows that the Plaintiff has 120 acres of land, but no money and is sick. Allowance may be made 141-305

141-588; 149-466;

Reasonable expenses includes atty fees 79-224
2nd wife assumes duties toward children of 1st marriage 26-330 331

24

Court,

Baker

vs.

Baker

J E J H Ror

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

1886

HISTORY OF THE CASE

Oct 30

Divorce granted, Alimony \$450
Custody of 3 children to Pltff 15 Sept

Nov 22

Pltff filed motion to modify Decree
and open up case, and required Deft
to pay for support of children Dec 5 p 575

Nov 30

Dec 3

Deft appeared to question
Pltff's decree and pay Pltff \$20 per m
Deft paid \$5 October 1887 and
paid all Alimony
Dora became 21 Aug 21, 1895. Gora on
Nov 12, 1898 & Pearl Feb 10, 1908
Pltff supported Dora 9 yrs, Gora 12 years
and Pearl 17 years from date of divorce

NOTES OF AUTHORITIES.

Order of the court for payment of money to
support children may be enforced by attachment
Burns 11 Dec 1054 or by Dist Ct App 452
Power of court as to children is a continuing power 158-628
Suit must be commenced within reasonable time 67
67 NE 280; Right to sue not questioned Id.
Order that husband pay, unconditionally, is a
Judgment
Judgment not barred till 20 years Burns 306
Statute does not run while defendant is a non
resident Burns Sec 298; 6 App 212;
In civil suits, 44 App for criminal conversation, cohabitation and
reputation, sufficient evidence of marriage, 41 Dec 435

13

No. _____

Leicester Court, DeKalb Co
 Bank of Vernon vs. Farmers Bank
 Baxter
 J. C. J. H. Rose Attorney for Deft.

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

Suit on ~~note~~ endorsement of note

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Model Gas Engine Co made its note
 for \$5000⁰⁰ payable to Bank of Vernon
 and Albert Robbins President of
 defendant, wrote a letter to plaintiff
 guaranteeing payment.
 Is Farmers Bank liable?

President, if not specially authorized, cannot
 bind the Bank Boones Law of Banking 101
 3 Am. Leading Decisions p 1274
 Morse on Banking Sec 144; 146-411 912,
 85 Federal Decisions p. 120 123

Court,

Kennedy vs. Garner et al
 J. E. & J. W. Rose
 Woodhull & Yeagley

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Plaintiff's father died testat, giving her \$100.00. All other heirs, in consideration of her releasing a claim she filed for services rendered her father agreed (procured) that she have an equal share with them. Deft. a had a contract with tenant that expired March 1/05 - more than one year after Deft. a's death. Heirs then made contract with tenant; crops raised in season of 1905 - land sold July 1/05 - by executor - Do the crops belong to the heirs or to purchaser of the land? If Muti executor sells the land the heirs are entitled to the rents, 3rd Ind. 441; 54 Ind. 444; 57-42; 76-527; 65-329; 12 App. 248; 119-56; 84-224; 29 Ohio St. 230; Rents accrued prior to death goes to ad. 20-386. No demand is necessary. 84-224. Death of life tenant terminates possession of all but right to enter for way going crops 1 Ind. 444; 98-278. Administrator, as such, not liable to heir. 24-202. Will may give power to sell, but not give interest in land 962-353. Way going crops belong to tenant of life tenant Taylor. Land & Tenant 378, 534. When the tenancy is uncertain, the tenant may reap the crops 8 Ind. 8 & 9 Law 319 & 318 Top. Uncut grass belongs to heir - 76-527, Hunt, 66 78. Rents of land accruing after death of testator belong to the heirs 29 Ohio St. 230 - In sale by commission in partition growing crops do not pass 100 125. Sheriff's sale does not convey growing crops 120 88. In adm. sale growing crops are not appraised & sold. Death of life tenant terminates estate and also possession of all but growing crops 1 Ind. 444; 98-278.

Superior Court, Allen Co.
 Barnahan Jas. C vs. Bowers Henry et al
 J. E. J. W. Roe

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

Foreclosure of Mechanics Lien

DATES
1901

HISTORY OF THE CASE

July 4 Work finished Amount due \$43.20
 including \$12.80 due Wm. Fredrickson
 Feb 24/05 Yedor & wife conveyed NW 1/4 of NE 1/4 - 3-32-13
 Rec 152-44 to Henry Bowers & Ann Bowers for \$1500 -
 May 1/05 Bowers & wife mortgaged land to Yedor & W
 Rec 125-44 To secure \$1000 -
 Plaintiff worked 159 hrs at .20 = 31.80
 Fredrickson 86 hrs at .15 = 12.90
 Sept 7/05 Notice of Lien filed of
 " 2 " Complaint filed & Ret. Sep 15
 at 1 P.M.

NOTES OF AUTHORITIES.

Laborer may have lien Burns 1901. See 7255
 Laborers lien covers land and building &c see 7256
 Lien of Mechanic is superior to former. Mort 20 for a
 The building goes: 150-684; Stat. Lien 114; 13 App. 522;
 Compl't. must be filed in one year: 15 App. 392,
 and Junior Mortgage must be paid 152-104; 151-412
 Building if sold must be removed ^{90 days} ~~in year~~ see 7256
 Demand not necessary 19 App. 195;
 What should notice contain. 19 App. 195; 137-688;
 18-176; 146-521; 19 App. 195.

Sale without relief See 7259

Attorneys fees included in Jud see 7267

Mechanic has prior lien to mortgage
 on the building. Burn see 7256; 150-684;
 where land is owned by H & W by entireties
 a lien may be had. 22 App. 271; 131-191; 87-490

Leiacit Court, *Hoble Co*
B. & O. RR vs. *Axtell & Co*
J. E. & J. H. & Co

Attorney for Pltf.

Attorney for Deft.

Nature of the Action.

29
 DATES
 1905

HISTORY OF THE CASE

Aug 28 Complaint filed
 Sept 27 *Hoble RR Co*
 Sept 9 Samuel Bradon, Byron P. Gray
 and John Parker appointed
 appraisers.

NOTES OF AUTHORITIES.

Complaint to condemn right of way.
 R.R. Co. may condemn. Acts 1905 p 59
 Burns sec 5137.
 May make 2nd condemnation E on RR Sec 1283.
 May appropriate beyond charter 9-469 ^{top}
 R.R. may make 2nd appropriation E on RR sec 930 ^{R 1283}
 If ¹⁰¹⁻³⁶⁶³ R.R. purchases right of way it may
 make changes E on RR 1285 bottom.
 Leo takes title conveyed E on RR sec 938
 R.R. may condemn for what E on RR ~~sec~~ 935
 what may be condemned E on RR sec 963
 Description may be amended 99-593; 103-386;
 125-509.
 objection, only pleading allowed see 5 act of 05

17

No. _____

DeKalb Circuit Court,

Joshua Baker Jr. vs. B O R A

Sharpless & Smith

Attorney for Pltff.

J E & J H Rose

Attorney for Deft.

Nature of the Action.

Damages for Malicious Pros.

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Plaintiff must show that the defendant had no probable cause. 148 Ind 581; 39 Blkf 445; 2 Ind 148; 18-362 Addison Co. v. 2 p. 66 p. 68 2+6

Defendant may rely on the statements of credible persons and whom he did believe 43-81 bottom a

Defendant may rely on advice of an atty after giving all the facts 43-7879 bottom

Indiana trial evidence sec. 67 d. 658

Plaintiff must prove malice. Ind. Trial Co sec 655 d. 149-131; 95-596; 43-132 Ind. J. Co. 660

Malice must be proven 149-131

Probable cause. In the court 149-131 Malice can not be inferred from want of prob. cause 149-131

Acquittal of defendant not evidence of malice 149-131

Defendant may testify that he did not act through malice. Ind. Trial Co. sec 655; 104-36

The burden is on plaintiff. Ind. J. Co. sec 652

18

No. 4566

Noble Circuit Court,

Kunkleman vs. B D

H. G. Zimmerman Attorney for Pltff.

Ror & Ror Attorney for Deft.

Nature of the Action.
 Petition for Pub Ditch
 26 feet 2 in below top of rail

DATES

HISTORY OF THE CASE

1903
 Mar 2 Petition filed
 Jan 12/04 Docketed
 Jan. J. W. Moorhouse, John A. Jennings
 and Chas W Benton Commissions
 Ordered to report Oct 1804
 Continued from time to Oct 20/05

NOTES OF AUTHORITIES.

Petition for Drais in Noble Co
 Remonstrance must be filed i
 ten days Burns sec 5625,
 Amendment adds 1903 p 390
 A remonstrance filed within the 10 days
 must be received. 101-78

Rail Road crossing stream Stat Sec 5753-5
 Rail Road, entitled to pay for changes
 in bridge required by ditch and for
 removing bridge for dredge 143-347³⁵²

Statute forbids construction Ach/05/2 480

In June April 14/05
 Fresh water lake cannot be drained
 lots 7/05 p 447 In June March 6/05
 Rail Road cannot recover damages
 for injury to bridge by ditch 61 Federal 885
 R.R. entitled to damages for highway xing 24 Ind 325

Duty to restore highway is a continuing one and applies to highway established after
 construction of rail road. 149 Ind 277; 62 Ind 350; 159 Ind 510; 171 Ind 819

19

No. 4827

Court,

Lanlan

vs.

B. O.

Frank P. Bethwell

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

32
DATES

HISTORY OF THE CASE

Sept 5/05 Petition filed

Set for 2nd day of Jan. Term 06
Ditch does not x rail road

NOTES OF AUTHORITIES.

Petition by Chas J. Lanlan for
ditch in Sparta, Mo.

20

No. 4841

Court,

Jas Buckles

vs.

B O

Petersson

Attorney for Pltf.

Rose Rose

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

8 Sep 24/05 Complaint filed
W Oct 3/05 Demurrer to complt

NOTES OF AUTHORITIES.

21

No. _____

Court,

B. D. R. R. Co vs. Interurban

J. E. & N. R. Co

Attorney for Pltff.

+ L. Welsheimer

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

crossing must be had under the
law of 1901. see act of 1901 p. 462 & 1909.
see act of 1903 p. 125.

34

22

No. 6967

Circuit Court, Detroit Co
 McKinnley vs. R. R. Co.
 H. W. Morris
 Rose & Rose et al

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

Aug 1/03 Complaint filed
 Sept 30/02 Decedent was killed
 Illinois statute requires action in 2 yrs
 May 13/03 Statute amended to one year

NOTES OF AUTHORITIES.

It is within the discretion of the court to allow
 amendments to pleadings after issue joined
 132-327; 28 App 174; 116-193; 111-494; 107-544; 64-270

23

No. 7557

Circuit Court, Dikath
 Remmer vs. Chapman
J. E. & J. H. Rose Attorney for Pltff.
Mounts & McNagney Attorney for Deft.

Nature of the Action.

Damages for Assault & Battery

DATES

HISTORY OF THE CASE

Oct 31/05 Assault Committed
 Nov 10/05 Complaint filed
 Nov 11/05 Summons & notice served

NOTES OF AUTHORITIES.

Complaint for damages from A to B
 Defendant may be required to testify B Dec 1869
 Defendant cannot prove former insults, L. & A. 137
 (Shoemaker vs Jackson lower)

24

No. _____

Court,

Brady vs. ~~Wm~~ Stinich

J. P. - J. N. Rose

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Parties are a brother who has been
absent and unheard of for 6 years
owned land by inheritance

Brother presumed dead

See Burns Stat sec 2385 & 2386

Facts which may be considered 19 Feb. R p 68
Admr. should settle debt 66 and 376
Death presumed from absence 22 & 1245
where the recovery of land is a question 2d.
also 109-567
Letters sent to absent 22 & 1252

Court,

vs.

Luisinger

Gratz
James

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

Feb 10/02 Deft land sold for Taxes \$99.77
 Dec 13/02 Pltff paid Taxes \$22.54

86

NOTES OF AUTHORITIES.

Plaintiff done general work in Treasurers office
 signed his name to receipts, received money
 and did all things that he could do.
 Personal must first be sold, 25-134; 57-274;
 81-208; 94-572, 102-385.

Auditor shall make duplicate see 8561 Burns, and
 shall deliver it to Treasurer see 8566.
 Treasurer shall make delinquent list see 8571
 Auditor shall certify to list. Id. Treasurer
 shall make a delinquent list and after a
 delinquent search, finding none, shall make a
 return. Auditor may not credit Treas.
 with delinquent taxes without oath see 8572.
 If Treasurer fails to make delinquent
 list, he is liable on his bond 8572.
 Treasurer may levy at any time 8577
 Auditor shall make delinquent list, and
 deliver to Treas and post at Court H. 8601
 manner of sale see 8603; Guaranty of sale 8609
 Lien of state transferred when see 8632. When sale
 is invalid 8631; Proof of state title; 8639;
 Suits to quiet title see 2640;
 Purchaser has lien, although land owner has per-
 sonal property subject to state taxes. 81-180, 110-111
 Mortgage cannot be foreclosed although
 taxes have been paid 89-368

26

No. _____

Circuit Court, DeKalb
Raider vs. Sheets

G E Emanuel

Attorney for Pltff.

J E of J H Rone

Attorney for Deft.

Nature of the Action.

To Quiet Title

DATES

HISTORY OF THE CASE

Complaint to Quiet Title

39

NOTES OF AUTHORITIES.

Defendant's procured a judgment against the plaintiff, on Dec. 30th 1897 in DeKalb Circuit Court for \$1200. See Dec 34th 305, on a complaint charging embezzlement. Court found the facts specially. Plaintiff filed petition in bankruptcy, and was discharged - she included this debt in her schedule. A debt created by embezzlement while acting in a fiduciary capacity is not released. Federal Statutes Vol 1 p 579 Code Judgments need not show that it was obtained by the term "fiduciary" refers to express trusts 2d - 581 top N. S. vol 34 - 981. The debt will be inquired into and not the form of the judgment only - Broadbush on Bankrupt Sec 482; Id 435. A case defining "fraud and embezzlement" 95 N. S. 580; Defendant may set up facts, although records are lost 18 Br. & p 249. A discharge does not extinguish the debt, it simply takes away the creditors right of action 2d 8. E. & G. vol 16 p 771 top. If a petitioner in bankruptcy, shown no property - only such as will be exempt by the laws of the state and no debt by such as are not payable. The petition should be dismissed 105 Federal Reporter 912. Property held in trust, evidenced by a written or express trust is not released by bankruptcy of defendant Ellison re bankruptcy 167 Dec 471

27

No. _____

Court,

Reel

vs.

Draggou

Attorney for Pltf.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

47

NOTES OF AUTHORITIES.

The Auditor or assessor cannot increase the valuation of property assessed by the Assessor. 106-368

4 App 374: 73 N.E. 1092. Injunction will not lie against placing on duplicate, 2d

County may hire ferret 155-345, 31 App 136
 Municipality liable 141-382, 138-434.
 County Assessor may assess omitted property Burns
 sec 8781

Circuit Court, DeKalb Co
 Ella Thomas vs. Alfred Thomas & 2
 J E & J H. Rose Attorney for Pltff.
 Willis Rhodes et al Attorney for Deft.

Nature of the Action.

To Quiet Title

DATES

HISTORY OF THE CASE

May 17/92 Complaint filed 3 Paragraphs
 " " " Lis Pendens notice filed
 " " " Aff of non res. filed
 Dec 17/02 Ans. of McClaren filed
 Dec 16/02 Ans. of Yocum filed
 March 3/03 Answered Answer of Yocum filed
 Oct 10/02 2nd Answered Answer of Yocum filed
 Dec 17/02 Answered Answer of Yocum filed

NOTES OF AUTHORITIES.

Complaint to Quiet Title - alleging that Alfred J. Thomas, sold land described to the plaintiff, and refuses to make a deed. The complaint should show kind of title 106-296; If an equitable title is claimed, all the facts should be set forth 2d. A complaint showing that plaintiff is the owner by a complete equitable title is good 130-464
 A judgement in such an action covers all that might have been liquidated in the action - 71-336 but does not operate on an after acquired title - 97-450; 125-185
 A transfer of interest will not render incompetent witnesses competent 38 & 25
 Heirs who are parties are not competent See 507
 Assignor not competent - See 510
 Tax deed is prima facie proof. Burns 120; See 8624
 Plaintiff need not show want of per. prop 145-49
 The Legislature may determine what evidence shall be prima facie 147-80
 See Doran vs Lupton 154-398; Wilson v Barico 158-578; Brown vs. Reines 31 Apr 520; 34 Apr 217
 Where deed is introduced, the burden is on the defendant, May v Dobbin 77 N. 8 353

29

No. _____

Court,

B & O

vs.

Leighty

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

May 24/75 Deed from Leighty, con. election &
 maintenance of Depot 1. See App 318

42

NOTES OF AUTHORITIES.

A Rail Road Co having taken a deed
 for land to build a depot on, in
 consideration of the location and maintain-
 ance of depot, has complied with the terms
 by maintaining it 30 years 89-375

No. _____

Court, _____

Popales

vs.

Gall

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

W. Craig willed $\frac{1}{4}$ of his estate to his four children for life, and at the death of each, property to go to the children of deceased, and if deceased had no children then property to go to nephews & nieces of deceased.

Deceased died leaving all his children surviving and each had children

NOTES OF AUTHORITIES.

A future and prospective interest in land not subject to conveyance

127-31; 125-139; 133-507,

The grand children of testator, having a life estate given them, after their parents death, have a vested estate in the land 101-172; 101-180; 113-323

The provision in the will, for the disposition of the property of a child, who dies childless, is inoperative, for the reason, that all had children, and were living at time of testators death, 152-362

Full Circuit Court,

Strebe vs. Geiser

J E of H Rose

Attorney for Pltff.

Le A Wrigley

Attorney for Deft.

Nature of the Action.

Petition for change of Highway

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Remembrance for damages
Measure of damages is difference in value
of farm "before & after taking" 22-101, 130-284
Use of land considered 139-262;
Benefits may be considered 84-496; 130-295;
134-262; 143-144; 158-8; 29 App 579;
Witness may testify as to convenience of land
owner 130-285; If petitioners pay it must be
before order is made 155-502;
No one but person entitled to damages can
maintain action relating thereto 4-485;
Burden on remonstrator 89-252;
Petition may state that Co. will make one here of
crossing 152-249;
Witness may not give opinion as to damages
143-486;
Petition may be amended, and the amendment
may be made by attorney 28 App 174;
Leave to amend by adding owners names
may be granted 55-78;
Leave may be given by circuit court to change
location 101-557; 134-485; 143-247;
Remonstrator can not raise objection to the
petition after he remonstrates 34-337;
Reviewers may consider benefits resulting
to the land by the improvements 29 App 584;
Jury may exercise their judgment where the
evidence conflicts 29 App 585 2^d clause
One petitioner may include location and
location 72 App 1102;
Pet. and proof need not show that the whole
people pass over the road 74 Wit.

32

No. 7835

Circuit Court, DeKalb Co
Jury Co vs. G. Walker & A

Brown & West

Attorney for Plff.

J. B. & A. Co

Attorney for Deft.

Nature of the Action.

To declare Vendors Lien

DATES

HISTORY OF THE CASE

Oct 24/06 Complaint filed.
Dec 20/06 Return filed to comply

45

NOTES OF AUTHORITIES.

Subrogation recognized 111-509

Lien cannot be created by agreement
95-225; 124-545; 144-488; 154-393; 41-29
Money loaned to pay purchase price is
is not purchase money 13 Ohio 157; Latham.
A. & L. Law vol 29 p 749;Conveyance made to pay past debt
good but a mortgage
made to secure past indebtedness, does
not divest record lien

33

No. _____

Circuit
Jackman

Court,

DeKalb Co

vs.

Myers & Co

Attorney for Plff.

Attorney for Deft.

Nature of the Action.

Suit on Replevin Bond

DATES

HISTORY OF THE CASE

NOTES OF AUTHORITIES.

Replevin bond given to Sheriff may
be sued by party 35-360; 16-374

A trial of the facts in original case is
conclusive against bondsmen, 23-500
24-248; 37-465; 37-465; 49-309; 110-1
The value of the property is the measure of
damages 16-374;

34

No. _____

Circuit Court, Noble Co

W. H. Huston vs. B. O. R. Co

L. H. Wrayley

Attorney for Pltf.

J. E. J. R. R.

Attorney for Deft.

Nature of the Action.

Damages for delay in shipping freight

DATES

HISTORY OF THE CASE

Complaint filed ret. Jan 7/06

NOTES OF AUTHORITIES.

Complaint charges damages for a
negligent delay in shipping stock
See 8th of 1905 1/2 59 Bums Wal 4/2 32976
The contract should be pleaded as a defense
See 1905 Supplement 5405 L. L. L. L.

47

35

No. _____

Circuit Court, DeKalb Co
 Drings Counsel vs. Chas. S. Zinn & P
 Daniel H. Lusk
 J. O. J. W. Rose

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

Action for Partition

DATES

1907

HISTORY OF THE CASE

Plaintiff sues for partition and
 alleges that defendant has an
 interest in the land.

Lori Muetzel, if living would own
 1/5 of the land. She lived with John
 Baber as his wife and child.
 Judgment against Baber in favor
 of his former wife who lived and

NOTES OF AUTHORITIES.

Marriage may be proven by reputation
 and cohabitation Ind. Trial evidence Sec 497
 & Behf 239; 2nd Ind 76; 82 Ind. 519; 101 Ind. 129
 Marriage proven by cohabitation and reputation
 by presumption proves dissolution of former marriage
 119 Ind. 597; Schenkels Domestic Relations
 Sec 25; 2nd Kent 87; 95 N.S. 76; Bishop on Mod 223
 2nd Greenleaf 462; 120 Ind 231;

Circuit Court, DeKalb Co

Georgia Point vs. John Shilling
J. B. J. H. Roe

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

Collection of Bartender's Judgment

DATES

1886

April 23

HISTORY OF THE CASE

Complaint filed before J. B. Berr
Warrant issued and ~~arrest~~ returned
arrest not found, trial and finding that
arrest is father of child. Transcript filed
in circuit court. Warrant issued
June 7/87, and defendant arrested. Sol
Shilling Pet Bail

Jan 6, 1888 verdict returned and
judgment rendered for \$850. J. B. 215
O. B. 31-575. Aug 5 '07 execution issued
defendant remained in jail one year.
He is now married and resides in DeKalb County.
Was willed 1/2 of 24 acres of land by his mother.
Defendant went through Bankruptcy since
Ind. was rendered

NOTES OF AUTHORITIES.

No exemption, nor appraisement in case of
judgment.
A Release in Bankruptcy does not discharge from
a judgment in Bankruptcy. In Re Hubert
98 Fed. Rept 710; In Re Baker 96 Fed. Rept 924
In Re Mahles 105 Fed. Rept 919; Branderburg Bank-
ruptcy sec 437

Court,

Groves

vs.

B & O R R Co

Attorney for Pltff.

Attorney for Deft.

Nature of the Action.

Petition for Public Drain

DATES

HISTORY OF THE CASE

50
Groves filed petition for a drain
in channel of old drain - which
was constructed under road bed - after
first ditch was built R R was built
and an iron pipe put in - afterwards the
road bed was widened to 120 feet
Ditch Commission requires Groves
to construct ditch across right of way

NOTES OF AUTHORITIES.

Co may build road across stream
St 1881-3903-5 - This section covers roads
and Appellate court holds that Co must
rester stream road & App, 390; 149-278
18 App 367

38

No. _____

Circuit

Court,

De Kalb Co

baseball Mathew vs. Hiram Moore

Hartman & Borst

Attorney for Pltf.

J B of H & R

Attorney for Deft.

Nature of the Action.

Suit on account for services
in setting broken leg.

DATES

HISTORY OF THE CASE

Complaint filed
Answer in 6th filed

NOTES OF AUTHORITIES.

Plaintiffs sue on account for setting
broken leg. Defendant pleads, negligence
on part of plaintiffs.Statute of limitations is 6 years 46-159
For forming counter claim 46-159, 103-46Statute does not run against ^{of 89-477}
p 500. 14-309; 6 Bluf 268; 72-280; 5-App 183,
Statute to bar Counterclaim must have
run, when suit was commenced. 91-457, 468
A counter claim may have been cause
for separate suit 10-App-133;Where one of two surgeons sued for malpractice
dies, the suit abates 103-468; Admissibility of one
partner, not a proper party, 103-468 477. Admissibility
of one partner not admissible against the other
103-468 478 but is admissible while the
treatment is going on 103-368 478 top.

39

No. _____

Circuit

Court,

DeKalb

Myrtle Kemery vs. Eunice Zeigler

Hoffman & Moody

Attorney for Pltff.

J E of H Ror

Attorney for Deft.

Nature of the Action.

DATES

HISTORY OF THE CASE

Jan 22/84 Eunice Zeigler thus, conveyed to Plaintiff
 $5\frac{1}{2}$ NW $\frac{1}{4}$ & NW $\frac{1}{4}$ SW $\frac{1}{4}$ 3-33-14 for \$3000, then
 assessed for taxation \$2625. Z 3 246
 Zeigler paid \$500, cash

Jan 22/84 Myrtle Kemery (Kemery) thus conveyed to
 Defendant SW $\frac{1}{4}$ 13, 33, 12 & cpl 60 acre off
 2 E side + $7\frac{27}{100}$ out of N.E. corner of SE $\frac{1}{4}$ 14, 33, 12
 for \$4200 - Z 3 246 assessed at \$2780. she
 received \$500 - cash to "boot."

Mar 24/90 Plaintiff sold to Krabill NW $\frac{1}{4}$ of SW $\frac{1}{4}$ 3-33-14 for \$400 -

May 27/90 Z 3 438, she sold to Carrier S $\frac{1}{2}$ of NW $\frac{1}{4}$ 3-33-14
 for \$1500 - X X 243

Nov 1/07 Com. Court filed

NOTES OF AUTHORITIES.

Life Tenant my lease for her life 146-399
 Plaintiff may recover during coexistence 37-463

40

No. _____

Circuit

Court,

DeKalb Co

Lemuel P. West

vs.

Henry West

J. B. A. Rose
J. B. Pomeroy

Attorney for Pltf.

Attorney for Deft.

Nature of the Action.

Divorce

DATES

HISTORY OF THE CASE

Complaint filed

NOTES OF AUTHORITIES.

Condonation must be pleaded
 Breedlove vs. Breedlove 27 App. 560 ⁵⁶²
 Condonation, implies a promise
 to treat the plaintiff in all respects
 with conjugal kindness. 34 Ind. 367
 Rose vs. Rose 87 Ind. 481;
 Condonation is based on repentance
 and if subsequent acts show no
 fruit of repentance, the condonation
 is removed. Armstrong vs. Armstrong 27-187.

Circuit Court, DeKalb Co
State vs. Sherwood

C. S. Smith

Attorney for Pltff.

J. C. & J. H. Rose

Attorney for Deft.

Nature of the Action.

Indictment for obstructing flow of water

DATES

HISTORY OF THE CASE

Defendants wife owns a farm on north side of highway, a public drain comes from the south and passes through a tile 12 in. The tile is four or five feet below the surface of the highway. In times of high water the tile does not carry all water, and it runs over the road in 3 places and floods the land of deft. He erected a dam at the south line of his land to prevent overflow of surface water.

Jan 5/08 Indictment returned, alleging

NOTES OF AUTHORITIES.

Owner of land may build a dam to keep surface water off of his land

64-167; 67-201; 78-278; 77-302; 99-205;

9 App 56; 12 App. 372;

See 67-209 middle for an instruction.

The dam not a nuisance 77-305 bottom

Indictment does not allege obstruction, but it must do so 58-417. The language of the whole indictment must be considered.

Indictment must show some substantial interference with travellers. 58-417. Defendant owned the land to the center of the highway, 21 App 499. Deft may use the land, but not to impede travel. Rose vs. Elliott of page 310 et seq. 16-340 middle. The owner of land over which a highway is located may make any use of it he pleases, not to interfere with travel - 15 Am & Eng Encyclopaedia of Law 416.

One who places an obstruction in the highway that interferes with travel is guilty - 15 Am & Eng 650b

42

No. 169

U. S. Court - Court,

James A. Whaley vs. B & O R R Co

Skiles Green & Skiles

Attorney for Pltff.

Miller, Shirley & Miller

Attorney for Deft.

Nature of the Action.

Damages

DATES

HISTORY OF THE CASE

Sept 17-07 Complaint filed

" " " Bond for costs filed S. Berio & Med. L. Co.
Sunties -

June 9 or case dismissed at Plaintiff's cost

Plaintiff's cost paid

1830

" " " " unpaid

33.30

" " " " unpaid

102.56

NOTES OF AUTHORITIES.

Grover Drains
Rail road may x stream 1881 3905-5

Arnold, Robert A.	1
Axtel	12
Axtell	4, 29
Baber	4, 25
Baker	22
Baker, John Jr.	30
Barber, John	48
Bathwell, Frank P.	32
Baxter, J. W.	21, 22
Bender, Chas. W.	31
Berry, Lewis	49
Borst	51
Bowers	5
Bowers, Henry	28
Braden, Samuel	29
Brady	4, 37
Bronn	45
Brown	39
Buckles, Jas.	33
Carnahan	5
Carnahan, Jas. C.	28
Carnahan, John	24
Carnahan, Lucy M.	24
Carver	8, 27
Casebeer	5
Casebeer, Mathew	51
Chapman	11, 36
Clark	19
Craig, W.	43
Cramer	5
Cramer, David	20
Cramer, Laura Bell	20
Doran	39
Draggoo	11, 40
Emanuel, C. E.	39
Foley, Jane (Schooley)	1
Forker, John	29
Fox, Ed.	17
Fredrickson, Wm.,	28
Gall	10, 43
Gisinger	6
Gratz	6, 38
Gray, Byron P.	29
Green	55
Groscop	50, 56

Guisinger	38
Hartman	51
Hawks, Mr. & Mrs.	19
Healey	22
Healy, Saml B.	22
Healy, Samuel B.	22
Heston, W. H.	47
Hoffman, P. V.	24
Hollister	6
Hollister, Sherman	16
Jackman	7, 46
Jackson	36
Jennings, John A.	31
Kemery	8
Kemery, Myrtle	52
Kennedy	8, 27
Kunkleman	8, 31
Laular	32
Launar, Chas J.	32
Leighty	4, 42
LeRoy	9, 23
Link	18
Link, Daniel	48
Lupton	39
McKagney	36
McKenan	23
McKinley	9, 35
Miller, Shirley	55
Mills	9, 23
Moore	5
Moore, Hiram	51
Moorhouse, J. W.	31
Mounts	36
Mounts, H. W.	35
Mountz, B.	18
Murch	9
Murch, Nancy	21
Myers	7, 46
Nelson, Charles	22
Norregon	9
Norregon, Sarah	21
Peterson	33
Points	10
Points, Georgia	49
Pomeroy, J. E.	53

Pontius	10
Pontius, Chas. E.	15
Popalee	10, 43
Raider	11, 39
Reed	11, 40
Reeves	39
Renner	11, 36
Rhodes	19
Rhodes, Willis	39
Robbins, Albert	26
Rose	19, 23, 31, 33, 35
Rose, J. E.	15, 16, 17, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 34, 36, 37, 39, 41, 42, 44, 47, 48, 49, 50, 51, 52, 53, 54
Rose, J. H.	1, 15, 16, 17, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 34, 36, 37, 39, 41, 42, 44, 47, 48, 49, 50, 52, 53, 54
Rose, James E.	1, 2, 15, 16, 17
Schooley, Arnold	1
Schooley, Jane	1
Schooley, Patricia (Arnold)	1
Sheets	11, 39
Sherwood	12, 54

Shilling	10
Shilling, John	49
Shoemaker	36
Skites	55
Smith, C. S.	54
Stebe	12
Stiniely	4, 37
Strebe	44
Tenneson	12
Tenneson, Iver	14, 18
Tenneson, Sabina	14, 18
Thomas	12
Thomas, Alfred	39
Thomas, Alfred J.	39, 41
Thomas, Ella	39
Wagner, Mrs.	22
Walker	12
Walker, G. W.	45
Welsheimer, F. L.	16, 34
Wert	45
West, Henry	53
West, Jennie P.	53
Wherlege, James A.	13, 55
Whetzel, Lorie	48
Woodhull	27
Wrigley, L. H.	44, 47
Wyatt, Diantha	19
Wyatt, Dianthy	13
Yeagley	27
Yeiser	44
Yoder & wife	28
Zeigler	8
Zeigler, Eunice	52
Zimmerman, H. G.	31
Zimn	12
Zimn, Chas. L.	48

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